



[3] On 12 May 2009 Mr Phillips and the others were informed that their positions were to be made redundant. However employment primarily at the Fergusson Terminal was to be offered to 29 of them. The 29 positions at the Fergusson Terminal would be on different terms and conditions from those currently in place, with particular differences involving changes to the transfer provisions.

[4] Mr Phillips and the others have raised personal grievances in relation to their redundancies. They have filed statements of problem in the Authority seeking determinations that they have been unjustifiably dismissed, and orders for their interim reinstatement. All of the applicants seek findings that the POAL has breached the duty of good faith it owes to them.

[5] The applicants have also sought the removal to the Employment Court of the entire matter, under s 178 of the Employment Relations Act 2000. The POAL does not oppose the application for removal. Accordingly this determination addresses the application for removal.

### **Determination**

[6] The application for removal is based on the grounds that:

- a. an important question of law arises in respect of the genuineness of the redundancy in the bargaining context, with particular reference to the requirements of s 103A of the Act;
- b. the matter is urgent in that the applicants seek to restrain the POAL from implementing the consolidation of the Bledisloe and Fergusson terminals, which is to be implemented in late June;
- c. since the Port of Auckland is the country's largest port and is a critical component of its international trade, it is in the public interest that the problem be resolved quickly;
- d. the applicants have indicated that they intend to file proceedings in the court to restrain an allegedly unlawful lockout with reference to the redundancies, so that essentially the same parties and same set of facts will be before both institutions ; and

e. in all of the circumstances the court should determine the matter.

[7] To the extent that the court does not yet have before it proceedings between the same parties and involving the same or similar issues I would not accept that the ground for removal in s 178(2)(c) is made out, and in any event Mr Mitchell has not relied on that ground. Otherwise I accept the parties' submissions as summarised above, and order the removal of the entire matter to the Employment Court.

R A Monaghan

Member of the Employment Relations Authority